

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KAMALJIT THIND,	)	CASE NO. C07-0726-RSL
	)	
Petitioner,	)	
	)	
v.	)	
	)	SUPPLEMENTAL REPORT
MICHAEL CHERTOFF, et al.,	)	AND RECOMMENDATION
	)	
Respondents.	)	
_____	)	

On October 25, 2007, the undersigned Magistrate Judge issued a Report & Recommendation (R&R), finding that petitioner was not afforded Due Process by the U.S. Immigration and Customs Enforcement (“ICE”) at his prior custody review. (Dkt. 12). The Court ordered ICE to conduct an additional custody review as provided in 8 C.F.R. § 241.4(f). (Dkt. 14). Pursuant to this Court’s Order, ICE conducted an additional custody review of petitioner’s case. (Dkt. 19, Ex. A). ICE concluded that petitioner should remain detained pending a decision on his Petition for Review pending in the Ninth Circuit Court of Appeals. *Id.* On February 12, 2008, petitioner filed a Motion to Compel Compliance with Court’s Order, contending that ICE did not comply with the Court’s Order. (Dkt. 16). Petitioner argues that he

01 is not a flight risk or a danger to the community, and that he is entitled to release on reasonable  
02 bond. *Id.*

03 On March 24, 2008, the Ninth Circuit issued a memorandum decision, denying petitioner's  
04 Petition for Review. *Thind v. Mukasey*, No. 06-75746 (9th Cir. 2008). Petitioner did not file a  
05 Petition for Rehearing.

06 Having carefully reviewed the entire record, I recommend that petitioner's motion to  
07 compel compliance with the Court's Order be DENIED.

## 08 II. DISCUSSION

09 "When a final order of removal has been entered against an alien, the Government must  
10 facilitate that alien's removal within a 90-day 'removal period.'" *Thai v. Ashcroft*, 366 F.3d 790,  
11 793 (9th Cir. 2004)(citing *Xi v. INS*, 298 F.3d 832, 834-35 (9th Cir. 2002)); INA § 241(a)(1)(A),  
12 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the latest of the following:

13 (i) The date the order of removal becomes administratively final.

14 (ii) If the removal order is judicially reviewed and if a court orders a stay of the  
15 removal of the alien, the date of the court's final order.

16 (iii) If the alien is detained or confined (except under an immigration process), the  
date the alien is released from detention or confinement.

17 8 U.S.C. § 1231(a)(1)(B)(emphasis added); *see also Khotessouvan v. Morones*, 386 F.3d 1298,  
18 1300 n.3 (9th Cir. 2004) (stating that the 90-day removal period commences on "the date the  
19 order of removal becomes final; the date a reviewing court lifts its stay following review and  
20 approval of the order of removal; or the date the alien ordered removed is released from non-  
21 immigration related confinement."). During the removal period, continued detention is required.  
22 INA § 241(a)(2), 8 U.S.C. § 1231(a)(2) ("During the removal period, the Attorney General shall

01 detain the alien.”). Where removal cannot be accomplished within the ninety-day removal period,  
02 detention beyond the removal period is authorized by INA § 241(a)(6), 8 U.S.C. § 1231(a)(6); *see*  
03 *Zadvydas v. Davis*, 533 U.S. 678, 682, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001). In *Zadvydas*,  
04 the Supreme Court determined that the government is entitled to a presumptively reasonable  
05 period of detention of six months to bring about the alien’s removal from the United States.  
06 *Zadvydas*, 533 U.S. at 701. After this six month period, the alien is eligible for conditional release  
07 upon demonstrating that there is “no significant likelihood of removal in the reasonably foreseeable  
08 future.” *Id.* The petitioner has the burden of coming forward with “good reason to believe that  
09 there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* If the  
10 petitioner meets this burden, the government must produce sufficient evidence to rebut  
11 petitioner’s showing. *Id.*

12 In the present case, the Ninth Circuit issued a final decision on March 24, 2008, thereby  
13 commencing the removal period. *See* INA § 241(a)(1)(B)(ii), 8 U.S.C. § 1231(a)(1)(B)(ii).  
14 Accordingly, petitioner’s ninety-day removal period will expire on or about June 24, 2008, and  
15 the six month presumptively reasonable period will expire on or about September 24, 2008.  
16 Accordingly, petitioner’s detention is now statutorily required, and petitioner’s motion to compel  
17 compliance with the Court’s Order must be denied. *See Zadvydas*, 533 U.S. at 701.

#### 18 IV. CONCLUSION

19 For the foregoing reasons, I recommend that petitioner’s motion to compel compliance  
20 with the Court’s Order be DENIED, and that the action be dismissed. A proposed Order  
21  
22

01 accompanies this Report and Recommendation.

02 DATED this 15th day of May, 2008.

03 

04 Mary Alice Theiler  
05 United States Magistrate Judge  
06  
07  
08  
09  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22